

ARKANSAS COURT OF APPEALS

DIVISION III

No. CA10-615

SHEQUENA WILLIAMS

APPELLANT

V.

ARKANSAS DEPARTMENT OF
HUMAN SERVICES

AND

O.R. AND J.W., MINORS

APPELLEES

Opinion Delivered October 6, 2010

APPEAL FROM THE FAULKNER
COUNTY CIRCUIT COURT,
[NO. JV-09-492]

HONORABLE DAVID MARION
CLARK, JUDGE

APPEAL DISMISSED;
MOTION TO WITHDRAW DENIED

RAYMOND R. ABRAMSON, Judge

On March 17, 2010, the Faulkner County Circuit Court entered an order terminating the parental rights of Shequena Williams to her two youngest children, O.R. (age 2) and J.W. (age 1).¹ In the termination order, the court found, by clear and convincing evidence, that (1) Ms. Williams had been sentenced in a criminal proceeding for a period of time which

¹The children were initially removed from the home on August 14, 2009, after Ms. Williams's oldest child was admitted to Arkansas Children's Hospital with head injuries consistent with child abuse. The child later died from those injuries. On February 16, 2010, Ms. Williams entered a negotiated plea of *nolo contendere* to second-degree murder in the child's death and received a nineteen-year sentence.

would constitute a substantial period of the juvenile's life and (2) Ms. Williams had subjected a juvenile to an aggravating circumstance.²

The court further found that the Department had an appropriate placement plan in place for the children—adoption; that the children were adoptable; and that there was a high likelihood of adoption. But because the father's rights had not yet been terminated, the court found that adoptability might be an issue. The court determined that, if the rights of the father, Anthony Roseburrow, were not terminated, the order terminating the mother's rights might be subject to being set aside or modified. The order stated that the court was retaining jurisdiction and venue with a review hearing to be held.

Ms. Williams appeals from this order terminating her parental rights. Her attorney has filed a motion to withdraw and a no-merit brief pursuant to *Linker-Flores v. Arkansas Department of Human Services*, 359 Ark. 131, 194 S.W.3d 739 (2004), asserting that there are no issues of arguable merit to support the appeal. Counsel's motion is accompanied by an abstract and brief listing all adverse rulings made at the termination hearing and explaining why there are no meritorious grounds for reversal. The clerk of this court sent copies of counsel's brief and motion to Ms. Williams informing her that she had the right to file pro se points for reversal. *See* Ark. Sup. Ct. R. 6-9(i)(3). Ms. Williams filed a pro se points brief on August 13, 2010.

² Despite the fact that Ms. Williams pleaded *nolo contendere* to second-degree murder for the death of her oldest child, the court did not make a specific finding under the statute that Ms. Williams had been found by a court of competent jurisdiction to have committed the murder or manslaughter of any juvenile. Ark. Code Ann. § 9-27-341(b)(3)(B)(ix)(a)(1).

Before we can reach the merits of this case, however, we must first determine whether this particular order purporting to terminate Ms. Williams's parental rights is a final, appealable order. In *Ford Motor Company v. Harper*, 353 Ark. 328, 330, 107 S.W.3d 168, 169 (2003) (citations omitted), our supreme court held

[w]hether a judgment, decree, or order is final is a jurisdictional issue that this court has a duty to raise, even if the parties do not, in order to avoid piecemeal litigation. Where no final or otherwise appealable order is entered, this court lacks jurisdiction to hear the appeal. In order for a judgment to be final and appealable, it must dismiss parties from court, discharge them from the action or conclude their rights to the subject matter in the controversy.

While orders terminating parental rights are usually final, appealable orders, *see* Ark. R. App. P.–Civ. 2(c)(3)(C), the trial court in this case reserved the right to change its ruling at a later date. In its oral pronouncement, the trial court expressed its concern regarding the issue of adoptability given that Mr. Roseburrow's rights had not yet been terminated and assured appellant's counsel that Ms. Williams's rights would be reinstated should Mr. Roseburrow retain his rights. The court made the following comments at the termination hearing:

The issues that I struggle with at this point in time, is the law states that the termination should be granted only if the children are adoptable. I have found clearly, that they meet the – I don't want to say the physical characteristics to be adoptable, but they meet that. The issue becomes the termination of the father. If his parental rights are not terminated, the children, in essence, become not adoptable, because he would have to consent to such an adoption. So I am *at this point in time*, I am going to find that her parental rights should be terminated.

Ms. Free, I will tell you, that should we come to the Termination Hearing on the father, and I find that his parental rights should not be terminated, I think if you

file a petition to have me set aside that Order, because at that point in time, the children will no longer be adoptable, I'll have to grant that.

So *at this point in time*, I am going to find that her parental rights should be terminated, subject to possible reconsideration, should the Court determine that his parental rights should not be terminated.

The issue of – Mr. Nichols, how far out do we want to set this for the next Hearing, what in essence, would be the continuation of the Termination Hearing?

.....

I'm going to terminate her parental rights. I am going to – but I will specifically tell you, Ms. Free, and if you want to review the Order and have it included in there, that should I find that the father's parental rights aren't terminated, this Order terminating her rights will be set aside. Because, I mean, at that point in time, the children are not adoptable.

.....

I don't even have a problem with – Mr. Nichols, when you prepare the Order – that should a subsequent Court determine that Mr. Roseburrow's parental rights should not be terminated, her rights will, in essence, be reinstated.

(Emphasis added.)

In its written order, the court ruled that, if Mr. Roseburrow's rights were not terminated at a subsequent hearing, the order would be subject to being set aside or modified because the children would no longer be adoptable. The court then retained jurisdiction with a review hearing to be held. It is apparent from this record that the trial court believed that the termination of Ms. Williams's parental rights would not be final unless and until a determination had been made as to Mr. Roseburrow's parental rights. Thus, in actuality, the termination of Ms. Williams's parental rights in this case was conditioned upon a subsequent

order terminating Mr. Roseburrow's parental rights. As the order did not conclude Ms. Williams's rights to the subject matter in the controversy, it was not a final, appealable order and jurisdiction in this court is lacking.

Appellant's counsel on appeal asserts that this jurisdictional issue is cured by the fact that the law does not require the trial court to terminate as to both parents at the same time, nor does it require the trial court to condition one parent's termination on the future termination of the other parent's rights. See *Griffin v. Arkansas Dep't of Human Servs.*, 95 Ark. App. 322, 236 S.W.3d 570 (2006). While counsel's interpretation of the law is correct, the order at issue here did, in fact, condition the termination of Ms. Williams's parental rights on the future termination of Mr. Roseburrow's rights and expressly retained jurisdiction with a review hearing to be held at a later date. Because this order is not a final, appealable order, we are without jurisdiction to hear this appeal.

Appeal dismissed and counsel's motion to withdraw is denied.

GLADWIN and GLOVER, JJ., agree.